FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5191 OF 2005

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	: Coram, : : : :	Court's or Judge's Orders .

Mr. Rajesh Datar for petitioner

CORAM: SMT. RANJANA DESAI, J.
12/9/2005

P.C.:-

In this petition the petitioner who was a sitting corporator of the Navi Mumbai Municipal Corporation (for short "N.M.M.C.") during the period 2000 to 2005 has challenged the order dated 31/3/05 whereby the Civil Judge, Senior Division, Thane has rejected his application praying that in view of declaration of new election, the reference made by the respondent, the Asst. Municipal Commissioner of NMMC under Section 12 of the Bombay Provincial Municipal Corporations Act, 1949 ("the said Act" for short be declared as infructuous and be

dismissed accordingly.

2. The case of NMMC appears to be that the petitioner has incurred disqualification to continue as a Councillor because he has accepted contracts from NMMC. The NMMC, therefore, filed reference under Section 12 r/w Section 405 of the said Act, praying that the petitioner may be declared as a disqualified Councillor not entitled to act as a Councillor any more.

3. I have heard the learned counsel appearing for the petitioner. He contended that the term of the N.M.M.C. is already over, and, therefore, the reference made by respondent 1 has become infructuous. He submitted that if during the term of the Corporation the reference was to be granted and the petitioner were to be disqualified he could not have remained corporator of the N.M.M.C. for the remainder of the term. Since the term is over even if it is assumed that he has incurred disqualification that would have no practical effect.

There is no express provision in the said Act which provides that on account of disqualification incurred by the petitioner he would be disqualified for being elected as a councillor for any specified period thereafter.

4. The learned counsel drew my attention to Section 10 (1B) (a) of the said Act which provides for such disqualification in case of a person who was elected as a Councillor to a seat which was reserved for a member belonging to a Scheduled Caste, Scheduled Tribe or a Backward Class of citizens, on the basis of false claim or a false caste certificate declaring that such person belonged to such reserved category.

5. The learned counsel urged that inasmuch as there is no such provision disqualifying other corporators from being elected or from being a councillor in case they incur such disqualification, the reference has really become infructuous and,

therefore, the learned judge erred in rejecting the application.

6. I am not impressed by this submission. Whether the petitioner has in fact incurred a disqualification or not is for the trial court to decide. Whether the said disqualification would have any practical effect or not, will not be material. Whether he had incurred disqualification or not must be investigated and a decision on that question must be given by the trial court. This is necessary in cases of people who hold high offices or who are elected representatives. There is no question of the reference becoming infructuous.

7. There is no merit in this petition. Petiton is rejected.

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